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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO / OAKLAND DIVISION

MARK HEINRICHS, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

WELLS FARGO BANK, N.A.,

Defendant.

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Case No. C 13-05434 WHA

**PLAINTIFF'S RESPONSE TO
DECLARATION OF ERIC J. TROUTMAN
REGARDING STATUS OF FCC
PROCEEDINGS**

On February 28, 2014, Defendant Wells Fargo Bank, N.A. (“Wells Fargo”), moved to stay this action under the primary jurisdiction doctrine. Dkt. No. 33. Wells Fargo argued that the Court should await decisions on two petitions to the Federal Communications Commission (“FCC”) that purportedly involved issues “best left to the FCC to be determined using its unique fact-finding abilities and technical expertise.” *Id.* at 2. In its reply brief, Wells Fargo argued that a stay was necessary to avoid expending resources on litigating the case. Dkt. No. 48 at 14. Taking Wells Fargo at its word, the Court stayed this action until October 15, 2014. Order Granting Motion to Stay (“Stay Order”), Dkt. No. 56 at 3.

Wells Fargo’s Declaration of Eric J. Troutman Regarding Status of FCC Proceedings details that, during the Court-ordered stay, Wells Fargo has actively lobbied the FCC ex parte to absolve itself from liability in this action. Dkt. No. 59. Specifically: (1) Wells Fargo sent its counsel in this action on multiple trips to Washington, D.C.; (2) Wells Fargo’s counsel met several times with FCC advisors, staff, and legal counsel; (3) Wells Fargo’s paid lobbyist made ex parte factual arguments to the FCC regarding Wells Fargo’s practices;¹ and (4) Wells Fargo’s paid lobbyist made legal arguments to the FCC regarding the effect of an unrelated Supreme Court case. *Id.* ¶¶5-8. In this ex parte lobbying to the FCC, Wells Fargo’s counsel and lobbyist argued about the impact any FCC action would have on *this* case. *Id.* ¶6. (“The *Heinrichs* litigation was specifically discussed during those meetings.”). All of Wells Fargo’s ex parte lobbying occurred *after* the period for public comment on the FCC petitions passed. *See* Stay Order at 2, 3.

At Wells Fargo’s urging, the Court stayed this action for six months while Wells Fargo devoted its efforts to a comprehensive ex parte lobbying campaign designed to absolve itself of liability in this action. None of Wells Fargo’s pre-stay submissions to this Court stated its intention to engage in ex parte lobbying. Plaintiff respectfully submits that the time has come to lift the stay.

¹ Monica Desai is the same paid lobbyist who submitted an “expert” declaration to this Court. *See* Dkt. No. 50.

1 Dated: October 1, 2014

By: /s/ Jonathan D. Selbin

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